

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NEW YORK STATE DEPARTMENT OF	:	CIV. ACTION NO.:
ECONOMIC DEVELOPMENT f/k/a THE	:	
NEW YORK STATE DEPARTMENT	:	07 CV 03786 (RMB)
OF COMMERCE ECONOMIC	:	
DEVELOPMENT,	:	
an official agency within the administrative	:	
offices of the State of New York,	:	<u>[PROPOSED] FINAL JUDGMENT</u>
	:	<u>UNDER DEFAULT AND ORDER</u>
Plaintiff,	:	<u>FOR REVERSAL OF T.T.A.B.</u>
	:	<u>DECISION, PERMANENT</u>
v.	:	<u>INJUNCTION, DAMAGES, AND</u>
	:	<u>AWARD OF ATTORNEYS' FEES</u>
MICHAEL NNAMDI STEWART, an	:	<u>AND COSTS</u>
individual and MOSAYK, INC., a North	:	
Carolina corporation	:	
	:	
Defendants.	:	

Plaintiff New York State Department of Economic Development ("NYSDDED") having duly served a Complaint upon Defendants Michael Nnamdi Stewart and Mosayk, Inc. (collectively "Defendants") alleging federal and common law trademark infringement, federal trademark dilution, and common law unfair competition; and Defendants having failed to file an answer or otherwise respond to the Complaint; and upon the Declaration of Daniel I. Schloss, dated July 3, 2007 and all of the exhibits attached thereto, and upon all proceedings heretofore had herein, and after reviewing the arguments and evidence of the Plaintiffs:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The March 13, 2007 Order of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office in the opposition proceeding entitled *New York State Department of Economic Development v. Michael Nnamdi Stewart*, Opposition No. 91162024 is reversed.

2. The opposition brought by NYSDDED entitled *New York State Department of Economic Development v. Michael Nnamdi Stewart*, Opposition No. 91162024 is sustained.

3. U.S. Trademark Application Serial No. 78243227, filed by Defendant Michael Nnamdi Stewart, is refused.

4. Judgment for the NYSDDED is entered against Defendants as to federal and common law trademark infringement, federal trademark dilution, and common law unfair competition

5. Defendants, their corporate parents, subsidiaries, directors, officers, agents, servants, employees, representatives, confederates, and affiliates and any other persons or entities acting in concert or participation with them, are permanently enjoined and restrained from:

(a) Using the NYSDDED Marks (as defined in the Complaint dated May 14, 2007) or any reproduction, counterfeit, copy, or colorable imitation of the NYSDDED Marks, including the Infringing Mark (as defined in the Complaint) in connection with the manufacture, importation, exportation, trans-shipment, distribution, advertising, promotion, offer for sale and/or sale of apparel or other items that are not NYSDDED Products (as defined in the Complaint), including Defendants' Products (as defined in the Complaint), or in any manner likely to cause purchasers or prospective purchasers to believe that Defendants' Products are connected with NYSDDED, or are NYSDDED Products; and

(b) Passing off, inducing, or enabling others to sell or pass off any apparel or other items that are not NYSDDED Products as or for products connected with NYSDDED or for NYSDDED Products; and

(c) Committing any other acts that will cause purchasers or prospective purchasers to believe Defendants' Products are connected with NYSDDED or are NYSDDED Products unless they are such; and

(d) Importing, exporting, manufacturing, shipping, delivering, holding for sale, offering for sale, selling, distributing, returning, transferring and/or otherwise moving or disposing of in any manner apparel or other items falsely bearing one or more of the NYSDDED Marks, or any reproduction, counterfeit, copy, or colorable imitation of same, including the Infringing Mark; and

(e) Further diluting and infringing the NYSDDED Marks and damaging NYSDDED's goodwill; and

(f) Otherwise competing unfairly with NYSDDED or any of its authorized licensees in any manner; and

(g) Assisting, aiding, or abetting any other person or business entity, in engaging in or performing any of the activities referred to in the above subparagraphs (a) through (f).

6. Defendants are to deliver up to NYSDDED any and all products, guarantees, circulars, price lists, labels, signs, prints, packages, wrappers, pouches, receptacles, advertising matter, promotional, and other materials in the possession of Defendants or under their control bearing the Infringing Mark.

7. Defendants are to deliver up for destruction their entire inventory of products bearing the Infringing Mark.

8. Defendants, within thirty (30) days after service of judgment with notice of entry thereof upon it, are to file with the Court and serve upon NYSDDED a written report under oath setting forth in detail the manner in which Defendants have complied with paragraphs 5 through 7, *supra*.

9. Defendants are to account for and pay over to NYSDDED all profits realized by Defendants for infringement of the NYSDDED Marks.

10. NYSDDED is to be awarded reasonable attorneys fees associated with this lawsuit, as well as costs pursuant to Local Civil Rule 54.1. NYSDDED is to submit attorneys' fees and costs to the Court.

11. NYSDDED is to have such other and further relief as the Court may deem equitable including, but not limited to, any relief set forth under Sections 34-39 of the 1946 Trademark Act and/or state statutory and common law.

12. This Court shall retain jurisdiction over the parties and the subject matter of this litigation for the purpose of interpretation and enforcement of this Order.

SO ORDERED.

Dated: July ____, 2007

By: _____
Honorable Richard M. Berman
United States District Judge